

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

FOUNDATIONS WORLDWIDE, INC.,)	CASE NO. 1:13-CV-00506
)	
Plaintiff,)	JUDGE BOYKO
)	
v.)	
)	
OLIVER & TATE ENTERPRISES, INC.,)	
)	
Defendant.)	
)	

DEFENDANT OLIVER & TATE ENTERPRISES, INC.’S
MOTION TO DISMISS OR TRANSFER

Defendant Oliver & Tate Enterprises, Inc. (hereafter referred to by its d/b/a, “COVERPLAY”), pursuant to Rules 12(b)(1) and (3) of the Federal Rules of Civil Procedure and Local Rule 7.1, moves to dismiss Plaintiff Foundations Worldwide, Inc.’s (“Foundations”) First Amended Complaint for Declaratory Judgment of Patent Noninfringement and Other Causes of Action, which was filed on April 25, 2013. COVERPLAY moves to dismiss the amended complaint on the grounds that Foundations improperly filed the action with this Court, Foundations is not entitled to the declaratory action it seeks as a matter of law, and venue is not proper or convenient here. In the alternative, COVERPLAY moves to transfer this action to the United States District Court for the Central District of California, pursuant to 28 U.S.C. § 1404(a), where a virtually identical case has been filed and venue is proper and more convenient.

In support of this motion, COVERPLAY submits the accompanying memorandum of law.

WHEREFORE, Defendant COVERPLAY respectfully requests that the Court dismiss this action or transfer it to the United States District Court for the Central District of California.

Respectfully submitted,

/s/ David P. Shouvin

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CERTIFICATE OF SERVICE

I hereby certify that on May 2, 2013 a copy of the foregoing was filed electronically. Notice of this filing will be sent by operation of the Court's electronic filing system to all parties indicated on the electronic filing receipt. All other parties will be served by regular U.S. mail. Parties may access this filing through the Court's system.

/s/ David P. Shoumlin
One of the Attorneys for Defendant
Oliver & Tate Enterprises, Inc.